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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,758	01/21/2004	Martin E. Thiede	1088.153US02	2888
24113	7590	01/03/2006	EXAMINER	
PATTERSON, THUENTE, SKAAR & CHRISTENSEN, P.A. 4800 IDS CENTER 80 SOUTH 8TH STREET MINNEAPOLIS, MN 55402-2100			CAMPBELL, KELLY E	
			ART UNIT	PAPER NUMBER
			3618	

DATE MAILED: 01/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/761,758

Applicant(s)

THIEDE ET AL.

Examiner

Kelly E. Campbell

Art Unit

3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-13 and 15-19 is/are rejected.
- 7) ☒ Claim(s) 6 and 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5,7-8,10-13, and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rouse (US 548,273) in view of ONO (US 2002/0036118A1) and Farlow (US 4,895,381).

Rouse teaches a rack support frame a first swing arm post (A, B left) assembly, wherein the first swing arm post (A, B) assembly includes a first swing arm post (A) and a first plurality of swing arms (B), wherein the first swing arms (B, left) are rotatable between a storage position and a loading position; and a second swing arm post assembly (A,B right) mounted to the cart support frame, wherein the second swing arm post (A,B right) assembly includes a second swing arm post (A, right) and a second plurality of swing arms (B, Right), wherein the second swing arms are rotatable between a storage position and a loading position, see Figure 1;

wherein the first plurality of swing arms (B, Left) are in a spaced-apart relationship substantially above each other when in the storage position to define a first plurality of storage regions, and wherein the second plurality of swing arms (B, Right) are in a spaced-apart relationship substantially above each other when in the storage position to define a second plurality of storage regions;

wherein the first and second plurality of swing arms (B) each include a pivot tube (C) that through which the first and second swing arm posts (A), respectively, extend;

wherein the first and second plurality of swing arms (B) each further include a horizontal support bar, see Figure 3, and a keeper (b) attached to the horizontal support bar opposite the swing arm post (A), wherein the horizontal support is attached to the pivot tube (C), and wherein the keeper (b) is attached to an end of the horizontal support bar that is opposite the pivot tube (C); referring to Figure 4, the keeper (b) has a projection extending from a second end and a hollow depression in the opposing end;

wherein the first and second plurality of sing arms (B) are vertically slidable with respect to the swing arm posts (A), see Column 2, lines 58-76;

retained in position by a pin (e) for the lower swing arms (B) on each side,

further including a support rail (A') that extends between the swing arm posts (A), and wherein the support rail (A') is perfectly capable of supporting instructions for using the device.

Rouse does not teach swing arms engagable with each other at the ends.

ONO teaches a frame structure including arm posts (1) and arms (2) wherein the ends of arms (2) are engagable with each other at second ends (1a), see Figures 1-2.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the ends of the rack support frame taught by Rouse, to have engagable arm ends as taught by ONO, in order to provide a more sturdy and rigidly spaced apart, frame support for heavier items placed between frame arms.

Rouse modified by ONO does not teach a cart with wheels attached.

Farlow teaches a cart (10) having a support frame (19) comprised of side beams, front beam and rear beam (16), see Figure 1, having wheels rotatably attached (15) thereto.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a wheeled frame for supporting the rack taught by Rouse modified by ONO, in order to easily transport the same items supported by the rack and position the rack in a convenient location for the users.

With regards to claim 11, it has been held that to be entitled to weight in method claims, the recited structure limitations therein must affect the method in a manipulative sense, and not to amount to the mere claiming of a use of a particular structure. *Ex parte Pfeiffer*, 1962 C.D. 408 (1961).

Claims 9 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rouse (US 548,273) in view of in view of ONO (US 2002/0036118A1) and Farlow (US 4,895,381) as applied to claim 1 above, and further in view of Burg (US 2,514,308).

Rouse modified by Ono and Farlow teaches all aspects of the invention as discussed above, except a first and second back rail support.

Burg teaches a cart frame (1), see Figure 1 including a first and second post (5) and a first and second back rail support post assembly (6,15,16) both mounted to the cart support frame, wherein the first and second back rail support post assemblies

(6,15,16) include a support post (6) and hook (15) attached to the support post (6) opposite the cart frame (1), see Figure 1.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the cart rack assembly taught by Rouse modified by Ono and Farlow, to include back rail support posts for providing means on the cart for carrying additional items of significant horizontal length for providing additional means of storing items and saving on storage space.

#### ***Allowable Subject Matter***

Claims 6 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1-19 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly E. Campbell whose telephone number is (571) 272-6693. The examiner can normally be reached on 9:00-5:30 Monday-Friday.

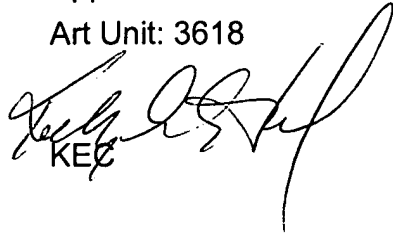
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis can be reached on (571) 272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

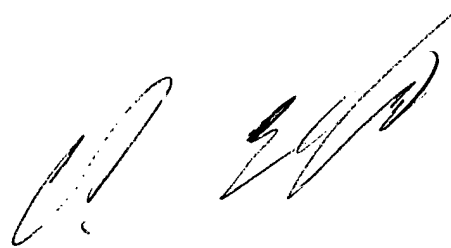
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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KEC

  
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